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FM AMEMBASSY BUCHAREST  
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INFO RUEHZL/EUROPEAN POLITICAL COLLECTIVE PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 BUCHAREST 000824

SIPDIS

STATE EUR/CE FOR ASCHEIBE

E.O. 12958: DECL: 12/09/2019

TAGS: PGOV RO

SUBJECT: ROMANIA ELECTIONS: SOCIAL DEMOCRATS CRY FRAUD, BUT WILL ANYONE LISTEN?

REF: BUCHAREST 815 AND PREVIOUS

Classified By: DCM JERI GUTHRIE-CORN FOR REASONS 1.4 (B) AND (D)

¶1. (C) Summary. The Social Democratic Party (PSD) has claimed systemic, nationwide electoral fraud and called for the annulment and re-run of the December 6 presidential runoff in which PSD candidate Mircea Geoana failed by a slim margin to unseat incumbent Traian Basescu. However, according to legal experts, the Constitutional Court is very unlikely to annul the December 6 results absent definitive evidence that any documented fraud would actually have changed the outcome of the election - an extremely high burden of proof. PSD is focusing its efforts on the relatively small diaspora vote, which Basescu won by a four-to-one margin, but the PSD case appears weakened by a lack of specific evidence, the fact that the party did not file its complaints until well after Basescu emerged as the winner, and the likelihood that both parties engaged in some prohibited activities. End Summary.

#### THE COMPLAINTS

¶2. (SBU) To the chagrin of some PSD insiders as well as their National Liberal Party (PNL) coalition partner, PSD officials claimed in public statements December 7 and 8 that President Basescu and the interim government led by PM Emil Boc and the Liberal Democratic Party (PDL) had perpetrated systemic fraud in the presidential runoff. PSD also filed an official complaint with the Constitutional Court requesting that the runoff be invalidated and a new second round administered. Per reftels, the incumbent Basescu defeated Geoana by a razor-thin 0.6 percent margin. According to PSD, more than 136,000 votes were compromised by illegal activities. Their complaint to the Constitutional Court included: multiple voting by individuals in Romania and abroad; tampering and falsifying of local election bureau reports; issuance of false Bucharest ID cards to Moldovan citizens; use of fictitious names on voter lists; valid Geoana votes recorded as invalid; and recorded votes "from the grave." (PSD has provided only one example of the latter). PSD seemed to hurt its own case by including a complaint that PDL-named local prefects had destroyed video footage from all of the special polling sites for transient voters. PDL officials quickly responded that all footage had been saved to optical disks and transmitted under seal to national election authorities, after which prefects were required by law to erase the remaining copies, something they suggested PSD should already have known.

#### THE ADJUDICATION PROCESS

¶3. (SBU) The Constitutional Court can invalidate the election only if it determines that there was sufficient "indisputable" fraud to change the outcome. According to official data, Basescu won by 70,000 votes (0.6 percent). PSD would therefore need to demonstrate that a sufficient number of these votes were the direct, demonstrable result of

fraud. Legal experts have commented that the burden of proving "indisputable" fraud is so high as to be almost impossible to meet. There is no deadline for the Court to issue a ruling, but most analysts and party officials believe the decision will come within the next few days and at least one member of the Court has said as much publicly.

#### PARTY REACTIONS

¶4. (C) Although PNL has echoed the allegations of significant fraud, Embassy contacts within the party say that the PNL leadership is reluctant to back PSD's challenge of the final outcome and request for a "do over" - despite repeated requests from PSD leaders. Several PSD officials, including former President Ion Iliescu, have also expressed reservations publicly over the legal challenge. Neither Basescu nor PDL leaders appear overly concerned about the Constitutional Court for the moment, characterizing the PSD effort as "desperate." President Basescu issued a statement December 9 calling for reconciliation, acknowledging appeals, court challenges and allegations of fraud as a natural part of the "legal electoral process" but calling on PSD to undertake these efforts in a calmer fashion.

#### IMPORTANCE OF THE DIASPORA

¶5. (C) The diaspora vote appears to have been the deciding factor in the election and therefore remains a primary focus of attention. A surprisingly high number of votes were cast outside Romania -- approximately 140,000 on December 6 compared to some 25-60 thousand in prior elections. According to official tallies Basescu lost the domestic vote

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by 15,000 votes but won the overseas vote by approximately 85,000 votes - 80 percent of overseas ballots. PSD claims that as much as ten percent of the expatriate vote resulted from multiple voting, pointing to a survey of 115 Romanian voters in Italy which found 11 who had voted more than once. PSD charges that the PDL member of parliament representing the diaspora coordinated a large-scale "electoral tourism operation" (busing voters to the polling places). At the same time, while Basescu has targeted the diaspora vote throughout his term and campaigned fairly often outside of Romania, PSD and PNL both acknowledge that they did not send precinct delegates to overseas polling stations for the runoff due to lack of funds.

#### COMMENT

¶6. (C) PSD's chances don't look good. PSD officials said they would not release publicly their written submission to the Constitutional Court "so as not to pressure the judges," but it is more likely that the three-day filing deadline did not provide sufficient time to accumulate compelling evidence. The PSD case is weakened by the fact that local PSD delegates signed almost all of the precinct reports certifying vote tallies. Tellingly, there were also no charges of fraud until after Basescu emerged as the winner. Furthermore, PDL officials pointed out that all the election procedures had been put in place by former Interior Minister Dan Nica and former FM Cristian Diaconescu - both PSD - before the October 1 collapse of the PDL-PSD coalition government. In the end, PSD is hoping that sympathetic judges on the Constitutional Court will put politics before the law. While an annulment cannot be ruled out, it would be unprecedented and highly suspect. It is also worth noting that both PSD and PDL likely engaged in some form of shady activities during the campaign, resulting in a neutral net result. One senior PSD official was even caught suggesting that "They did a better job of it than we did."

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